

**INQUIRY INTO FURTHER INQUIRY INTO THE
REGULATION OF BUILDING STANDARDS**

Organisation: City of Sydney Council

Date Received: 2 September 2021

31 August 2021

Our Ref: 2021/321586
File No: S110695

David Shoebridge MLC
Chair
Public Accountability Committee

By email: public.accountability@parliament.nsw.gov.au

Dear Mr Shoebridge,

Further inquiry into the regulation of building standards

The City of Sydney Council welcomes this further inquiry into the regulation of building standards and appreciates the opportunity to respond.

The City is of the view that further changes are necessary to resolve cladding concerns, including clarity around replacement materials and further funding options for councils and building owners.

Please find attached Council's formal submission. I give permission for the City's letter and submission to be published in full.

Should you wish to speak with a Council officer about further inquiry into the regulation of building standards, please contact

Yours sincerely

Monica Barone
Chief Executive Officer

City of Sydney response to The Further Inquiry into Regulation of Building Standards

Introduction

This submission responds to the invitation by the Public Accountability Committee to contribute to its further inquiry into the regulation of building standards.

The first inquiry (established 4 July 2019) into the regulation of building standards, building quality, and building disputes provided a final report on 30 April 2020. The report contained some (22) recommendations to which, the NSW government provided a response on 30 October 2020.

The assessment and remediation works associated with flammable cladding continues to impact the City's technical and legal staff resourcing.

The City is also responding to Government requests for information and support for the Project Remediate program to assist building owners with cladding compliance.

In respect to other generic building defects, Council continues to undertake reactive inspections and investigations when such matters are reported.

The addition of new orders being prepared via the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 issued by the Office of the Building Commissioner provides further avenues of enforcement for poor work quality.

These orders and the co-ordination of work between Council and the Department of Fair Trading helps provide improved consumer confidence in the purchase of apartments within residential flat buildings.

Key Recommendations

That Government:

1. provide further financial assistance to councils to contribute to the cost of regulatory activity related to cladding compliance programs and legal challenges.
2. consider broadening financial assistance currently available for owners so that funding assistance can be provided towards the engagement of building consultants to assess cladding on buildings.
3. broaden the eligibility criteria for financial assistance for owners of buildings not currently eligible for assistance through Project Remediate
4. provide clear industry guidance on cladding acceptability through full scale testing of materials particularly in regard to fitted cladding types to existing buildings.
5. develop clear industry guidance that enables certainty in cladding replacement project materials, construction practices and specifications.
6. consider establishing a referral service for councils to access government expertise such as Fire and Rescue NSW to provide advice on cladding retention projects.

7. increase Building Information Certificate application fees to discourage the use of such certificates to circumvent the construction certificate and mandatory inspection pathway.
8. commit to working with councils to develop a Memorandum of Understanding with the Department of Fair Trading to clarify enforcement roles when there is regulatory crossover.

Response to the Inquiry Terms of Reference

1. *That the Public Accountability Committee inquire into and report on:*
 - (a) *the efficacy and adequacy of the government's regulation of building standards and specifically,*
 - i. *the cost, effectiveness and safety concerns arising from the use of flammable cladding,*
 - ii. *private certification of and engineering reports for construction projects, and*
 - (b) *any other related matter.*
2. *That the committee report by 25 November 2021.*

Cost to Local Government

Combustible cladding investigations and remediation can be complex, high-risk and costly to councils and building owners. The City's current cladding compliance program has existed for 3 years and resulted in 509 preliminary site investigations. The program will take several more years to resolve.

Additional costs of the program include three years of the wages for senior building surveyors at \$378,000 per year, plus management, administration and legal costs.

The cost is increased when legal challenges (L&EC NSW) are lodged against development control orders and building rectification orders issued to remove highly flammable cladding. The City has experienced one (1) challenge to date amounting to \$66,000 in legal costs.

The current Project Remediate proposal provides councils with a one-off payment of \$10,000 per building registered is welcomed, this only represents a small percentage of the costs to council to resolve remediation matters, and only applies to eligible buildings.

To date, only 18 of 290 buildings being investigated by Council are registered for Project Remediate. Council estimates only 72 of the 290 buildings are eligible for Project Remediate.

Recommendation

1. provide further financial assistance to councils to contribute to the cost of regulatory activity related to cladding compliance programs and legal challenges.

Cost to Building Owners

Costs are also experienced by building owners in seeking the services of building consultants to either demonstrate that existing cladding is safe to remain or requires removal and replacement. Under the current funding program these costs are not eligible for funding. In addition, Project Remediate only applies to residential apartment (class 2) buildings.

Recommendations

2. broaden the financial assistance currently available for owners so that funding assistance can be provided towards the engagement of building consultants to assess cladding on buildings
3. broaden the eligibility criteria for financial assistance for owners of buildings not currently eligible for assistance through Project Remediate

Cladding Materials

Cladding with a polyethylene (PE) core of >30% by mass is a banned product in new construction. Cladding that is a banned product can be the subject of a Building Product Rectification Order directing its removal if it was installed prior to the ban. Cladding having a PE core of <30% by mass is therefore not subject to the banned product classification which does raise fire hazard concerns. Council can seek removal of cladding with a PE core of <30% through a Fire Safety Order. However, to reduce fire risk concerns and to provide further certainty it would assist if there was greater provision of technical guidance for councils to rely on the Cladding Product Safety Panel report to ground a concern for a fire safety order.

Recommendations

4. provide clear industry guidance on cladding acceptability through full scale testing of materials particularly in regard to fitted cladding types to existing buildings.
5. develop clear technical guidance that enables more certainty in cladding removal and replacement project materials, construction practices and specifications.
6. consider establishing a referral service for councils to access government expertise such as Fire and Rescue NSW to provide advice on cladding retention projects.

Other Building Defects

Liability placed upon certifiers for works undertaken without Construction Certificates or as a result of missed inspections are resulting in an increased demand for councils to assess Building Information Certificates and undertake enforcement activities where applications for Building Information Certificates are refused. The cost of these activities are not adequately covered by the application fee and available cost compliance notices.

The co-ordination of enforcement action between Council and the Department of Fair Trading can result in extended investigation time and cost. This is particularly true after occupation when the council's enforcement is placed on the owners of the building while the associated building work rectification orders are issued to the developer.

Recommendations

7. That the fees for Building Information Certificate applications are increased to discourage the use of Building Information Certificates to circumvent the construction certificate and mandatory inspection pathway.
8. That a Memorandum of Understanding between the Department of Fair Trading and Councils be developed to clarify enforcement roles when there is regulatory crossover.